

**Franchise Tax Board****ANALYSIS OF ORIGINAL BILL**Author: McClintock, et al.Analyst: Kristina E. NorthBill Number: SCA 5Related Bills: See Legislative HistoryTelephone: 845-6978Amended Date: March 21, 2007Attorney: Patrick Kusiak

Sponsor: \_\_\_\_\_

**SUBJECT:** Taxes/Voter Approval**SUMMARY**

Upon approval by the voters, this measure would amend the California Constitution to require voter approval before a governmental entity could impose a new tax or a change to an existing tax.

Discussion in this analysis is limited to provisions of the measure that affect the department. This is the department's first analysis of this measure.

**PURPOSE OF THE BILL**

According to the author's office, the purpose of this measure is to require that all taxes be approved by the voters before they can be imposed by a governmental entity.

**EFFECTIVE/OPERATIVE DATE**

If approved by the Legislature and placed on the ballot for the February 2008, Primary Election, this measure would become effective the day following approval by the voters. This measure would apply to any new tax or change in tax imposed on or after January 1, 2007.

**POSITION**

Pending.

**ANALYSIS****FEDERAL/STATE LAW**

California law was completely restructured in 1983 to incorporate much of the federal tax law by reference to the Internal Revenue Code (IRC), concentrating primarily on the differences between California and federal law. For example, the California personal income tax return starts with federal adjusted gross income (AGI) and requires adjustments to be made for differences between federal and California law. In areas such as gross income, deductions, and accounting periods and methods, California corporate franchise and income tax law consists largely of incorporated federal provisions.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Selvi Stanislaus

4/6/07

Where federal law has been incorporated into California law, federal regulations are applicable for California purposes, unless they conflict with California law or regulations.

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established pension and health plans in private industry to provide protection for individuals in these plans. In general, ERISA does not cover group health plans established or maintained by governmental entities, churches for their employees, or plans that are maintained solely to comply with applicable workers compensation, unemployment, or disability laws. ERISA explicitly preempts state laws.

The California Constitution currently allows the state, counties, cities, special districts, and school districts to impose taxes on persons, corporations, or other entities, as prescribed by law. Major taxes levied by the state include personal income tax, corporation franchise and income tax, and the sales and use tax. The state may levy new or change existing state taxes for the purpose of increasing revenues, but such enactments require an affirmative 2/3 vote by the Legislature. The Franchise Tax Board (FTB) is the state agency responsible for administering the Personal Income Tax and the Corporation Tax.

The California Constitution currently defines, for local government taxation, a “general tax” as a tax imposed for general governmental purposes, and a “special tax” as a tax imposed for specific purposes. A 2/3 voter approval is required for local governmental entities to impose, extend or increase any general tax or special tax.

### THIS MEASURE

This measure would make the following changes:

- Define “governmental entity” as the State or a local government.
- Define “tax” as any monetary exaction imposed by a governmental entity with specified exceptions. *Exceptions* include exactions in exchange for goods or services, as specified, fines and penalties imposed by the judicial branch, fees for a trade or business license, and property-related assessments, fees, or charges. The payer must voluntarily request the goods or services and the payment must be used solely to provide at the actual or lesser cost of the requested goods or services. The payment could not be a condition of receiving a decision, a privilege, or permission from any governmental entity.
- Define “special tax” as a tax, the revenues from which are required by law to be expended on specific purpose or purposes.
- Require voter approval for any increase in tax levied upon any taxpayer by a governmental entity, including, but not limited to, the imposition of a new tax, an increase in the tax rate, a change in the method of computation of tax, or a change in the taxpayers subject to a tax. A majority vote would be required to impose a general tax and a 2/3 vote would be required to impose a special tax.

- Specify that any new tax or change in tax that is imposed on or after January 1, 2007, and before the effective date of this measure, without voter approval, must cease to be levied beginning the day after the next regularly scheduled election held by the imposing governmental entity, unless the new tax or change in tax is placed on the ballot and receives voter approval.
- Specify that if more than one tax or change in tax requires the same threshold for voter approval at the same election, those taxes or changes in taxes shall be placed on the ballot for that election as a single question.
- Allow any person, entity, or class of entities liable for payment of a monetary exaction imposed by a governmental entity to seek relief in a court of competent legal jurisdiction. The governmental entity would bear the burden of proof that the tax levy or the manner in which it was imposed conforms to law.
- In the event the Governor proclaims an emergency under the Emergency Services Act, a governmental entity could impose a new special tax or change an existing special tax if the imposition is for the exclusive purpose of addressing causes or effects of the emergency and is approved by an affirmative 4/5 vote of each house of the Legislature. The tax could be levied until the day after the next regularly scheduled election.

#### IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

State income tax law can be changed by reference to the IRC, some of which are compelled by the United States Constitution. It is unclear how these changes would be impacted by this measure.

ERISA, portions of which are embedded within the IRC, explicitly preempts state law. If legislation to conform to an ERISA-based change to the IRC fails due to this amendment, California law could become incompatible with the requirements of ERISA. Article III, Section 3.5 of the California Constitution requires FTB to enforce a California law preempted by federal law until an appellate court decision provides otherwise. If such a circumstance were to occur, this constitutional amendment would require the department to defend a preempted state law in court, with the relative certainty of an adverse judicial determination and the possibility of an adverse award of attorneys' fees.

It is unclear how this measure would impact automatic repealers and cease operative dates that occur on or after January 1, 2007.

If this measure were to be approved by a 2/3 vote by each legislative house, the earliest it could be placed on the ballot for voter approval would be February 5, 2008. Current legislation authorizing a new tax or change to tax enacted in 2007 could be operative beginning on or after January 1, 2007, and the 2007 tax return would contain those new or changed taxes. In this instance, this measure would require the collection of such a new tax or change to a tax to "cease" the day after the election if it fails to be approved by the voters. The measure lacks direction for the treatment of tax collected prior to the cessation of collection.

Under the California Constitution, a taxpayer must pay and exhaust all administrative remedies before going to court to challenge any tax paid. Actions to enjoin the collection of a tax are prohibited. It is unclear if the intent of the bill is to give taxpayers a separate legal action by this measure that could be used to challenge a tax levy without payment, which is in contrary to existing law.

## **LEGISLATIVE HISTORY**

AB 919 (Rainey, Stats. 1997, Ch. 38) implemented Proposition 218 Omnibus Implementation Act to prescribe specific procedures and parameters for local jurisdictions in complying with Article XIII C and Article XIII D of the California Constitution. In response to numerous questions raised by Proposition 218, the Legislative Analyst's Office convened meetings with local agency representatives, taxpayer advocates, the public finance community, legislative representatives, and developers to discuss legislative options to clarify Proposition 218. This initiative was a forged consensus of the group that unanimously supported provisions to clean-up and clarify Proposition 218.

Proposition 218 - In November 1996, California voters approved Proposition 218, a constitutional amendment that restricts local officials' ability to impose taxes, assessments, and property-related fees, and imposed various voter approval requirements on these levies. The initiative also allows local voters to use the initiative power to reduce and repeal local taxes, assessments, and fees and charges.

Proposition 13 - In May 1978, California voters approved Proposition 13, a constitutional amendment that prohibits state lawmakers from imposing new property taxes without a 2/3 vote of the Legislature.

## **OTHER STATES' INFORMATION**

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws do not require voter approval comparable to this California measure. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

## **FISCAL IMPACT**

The department's costs to administer this measure cannot be determined until implementation concerns have been resolved, but could be moderate.

## **ECONOMIC IMPACT**

### Revenue Estimate

Because this measure would only change the method by which a tax increase is created, the measure would not have an impact on the amount of revenue collected under current law.

## **POLICY CONCERNS**

By requiring voter approval for all tax changes, including federal conformity, this measure would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

## **LEGISLATIVE STAFF CONTACT**

Kristina E. North  
Franchise Tax Board  
(916) 845-6978  
[Kristina.North@ftb.ca.gov](mailto:Kristina.North@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
(916) 845-6333  
[Brian.Putler@ftb.ca.gov](mailto:Brian.Putler@ftb.ca.gov)